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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,136	11/12/2003	Gary Ames Peck	CA-282	6221

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William J. Crossetta, Jr.  
Crossetta & Associates  
905 Convention Towers  
43 Court Street  
Buffalo, NY 14202

EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



**Office Action Summary**

Application No.

10/706,136

Applicant(s)

PECK, GARY AMES

Examiner

Stephen J. Castellano

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 33-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11, 13-21, 24, 25 and 27-32 is/are rejected.
- 7) ☒ Claim(s) 12, 22, 23 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11-12-03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



Applicant's election of Group A: Fig. 1 in the reply filed on April 14, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 10 and 33-38 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on April 14, 2006.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Williams et al. (Williams).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 13 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams.

Re claim 9, Williams discloses the invention except for protruding ridge of the metal paint container. Official notice is taken that metal paint containers and bottom sidewall



outwardly protruding ridges for paint containers are well known. It would have been obvious to modify the paint container to be metal and to have a bottom sidewall outwardly protruding ridge to provide a container that secures in a stable manner with the topple resistant receptacle of the kit.

Re claim 13, Williams discloses the invention except for the size. It would have been obvious to modify the size of the topple resistant receptacle to be at least equal to two times the surface area of the bottom of a gallon container as a matter of design choice in selecting a size large enough to retain the volume of a full gallon paint can if such should spill.

Re claims 27-31, Williams discloses the invention except for the adapter plate and the ladder hook. Official notice is taken that adapter plates and ladder hooks are well known. It would have been obvious to add the adapter plate to provide a means to convert the circular attachment to a rectangular attachment. It would have been obvious to add the ladder hook to suspend the receptacle from a ladder.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Demitry.

Williams discloses the invention except for the oblong nature of the receptacle. Demitry teaches an oblong receptacle with rounded end and flat end. It would have been obvious to add an area for a brush support which is rectangular and to make the rectangular receptacle circular such that one end is rounded while the brush support is located at a flat end in order to provide a space to rest a brush.

Claims 3, 4 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Mitchell.



Williams discloses the invention except for a double walled retainer wall. Mitchell teaches a double walled retainer wall. It would have been obvious to add the double wall to reinforce the outer perimeter of the receptacle.

Claims 14-21, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Pool.


Williams discloses the invention except for the slot shield. Pool teaches a slot shield. It would have been obvious to add the slot shield to prevent paint from clogging the upper rim of the paint can.

Claims 12, 22, 23 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on increased flexibility plan (IFP).



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Stephen J. Castellano  
Primary Examiner  
Art Unit 3727

sjc